

1      **Jackson D. Moll (026556)**  
2      **HAINES, KRIEGER & BALDWIN, PLLC**  
3      **15111 North Pima Road, Suite 130**  
4      **Scottsdale, Arizona 85260**  
5      **Tel: (480) 969-3300**  
6      **Fax: (480) 969-3533**  
7      **Email: jmoll@hkblawgroup.com**

8      **Attorneys for Debtor(s)**

9                   **UNITED STATES BANKRUPTCY COURT**

10                  **DISTRICT OF ARIZONA**

11      In re:

12      GARY VERN KENDRICK,  
13      SSN: xxx-xx-6859, and

14      SHARON KAY KENDRICK,  
15      SSN: xxx-xx-8444,

16      302 N. 166<sup>th</sup> Ln.  
17      Goodyear, AZ 85338

18      Debtors.

19      GARY VERN KENDRICK and  
20      SHARON KAY KENDRICK,

21      Plaintiffs,

22      vs.

23      MORGAN STANLEY MORTGAGE  
24      CAPITAL HOLDINGS, LLC; AMERICA'S  
25      SERVICING COMPANY; AND  
26      MORTGAGE ELECTRONIC  
27      REGISTRATION SYSTEMS, INC.;

28      Defendants.

Chapter 13

Case No. 2:10-bk-16121-GBN

Adv. No. 2:10-ap-01400-GBN

**COMPLAINT TO DETERMINE THE  
VALIDITY, PRIORITY OR EXTENT OF A  
LIEN OR OTHER INTEREST IN REAL  
PROPERTY**

Real Property Address:

302 N. 166<sup>th</sup> Ln.  
Goodyear, AZ 85338

COME NOW the Plaintiffs, Gary Vern Kendrick and Sharon Kay Kendrick, by and through counsel undersigned, and hereby allege as follows:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C. § 506(a), and Rule 7001, et seq., Fed R. Bankr. P.
2. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B) and (K).

- 1       3. Defendant Morgan Stanley Mortgage Capital Holdings, LLC (“Morgan Stanley”), based  
2       upon information and belief, is a New York limited liability company and is not authorized  
3       to conduct business in the State of Arizona.
- 4       4. Based upon information and belief, Defendant Morgan Stanley is a business entity and is  
5       not subject to the Servicemembers Civil Relief Act.
- 6       5. Based upon information and belief, Defendant Morgan Stanley is not insured by the  
7       Federal Deposit Insurance Corporation.
- 8       6. Based upon information and belief, Defendant America’s Servicing Company (“ASC”), is  
9       authorized to conduct business in the State of Arizona.
- 10      7. Based upon information and belief, Defendant ASC is a business entity and is not subject  
11       to the Servicemembers Civil Relief Act.
- 12      8. Based upon information and belief, Defendant ASC is not insured by the Federal Deposit  
13       Insurance Corporation.
- 14      9. Based upon information and belief, Defendant Mortgage Electronic Registration Systems,  
15       Inc. (“MERS”), is authorized to conduct business in the State of Arizona.
- 16      10. Based upon information and belief, Defendant MERS is a business entity and is not subject  
17       to the Servicemembers Civil Relief Act.
- 18      11. Based upon information and belief, Defendant MERS is not insured by the Federal Deposit  
19       Insurance Corporation.
- 20      12. Plaintiffs reside in Maricopa County and are the Debtors in the above-captioned Chapter  
21       13 bankruptcy proceeding.
- 22      13. Plaintiffs filed a voluntary petition under Chapter 13 of the Bankruptcy Code on May 24,  
23       2010 in the U.S. Bankruptcy Court in and for the District of Arizona, and such case was  
24       assigned the administrative Case No. 2:10-bk-16121-GBN.
- 25      14. Plaintiffs, at the time the instant Chapter 13 bankruptcy case was filed, were the owners of  
26       certain real property, such real property being their residence, (hereinafter the  
27       “Residence”) located at 302 North 166<sup>th</sup> Lane, Goodyear, Arizona, and having a legal  
28       description as follows:

1                   Lot 18, Canyon Trails Phase 1, According to Book 529 of Maps, Page 43, Records  
2                   of Maricopa County, Arizona.

- 3         15. The Plaintiffs believe and thereon allege that the Residence is worth \$110,000.00 based  
4                   upon a real estate appraisal prepared March 23, 2010 by Craig Flores of Huffman  
5                   Appraisal Group, Inc. A true and correct copy of the real estate appraisal is attached hereto  
6                   as Exhibit A and is incorporated herein by reference.
- 7         16. The Residence is subject to a first position mortgage lien (hereinafter the “First  
8                   Mortgage”), initially in favor of WMC Mortgage Corp. (“WMC”), its successors in interest  
9                   and/or assigns, as evidenced by that certain Deed of Trust dated February 16, 2006 and  
10                  recorded in the office of the County Recorder for Maricopa County, Arizona at Record  
11                  Number 2006-0264785 on February 27, 2006 (hereinafter the “First D/T”). A true and  
12                  correct copy of the First D/T is attached hereto as Exhibit B and is incorporated herein by  
13                  reference.
- 14         17. MERS is the nominee for WMC and WMC’s successors and assigns, and is the  
15                  Beneficiary under the First D/T.
- 16         18. MERS, as nominee for WMC, assigned the First Mortgage and/or the First D/T to  
17                  Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I  
18                  Inc. Trust 2006-WMC2 in accordance with that certain Assignment of Deed of Trust dated  
19                  January 13, 2009 and recorded in the Office of the County Recorder for Maricopa County,  
20                  Arizona at Record No. 2009-0057874 on January 23, 2009. A true and correct copy of the  
21                  Assignment of Deed of trust is attached hereto as Exhibit C and is incorporated herein by  
22                  reference.
- 23         19. Based upon information and belief, MERS, as nominee for WMC, has transferred and/or  
24                  assigned the servicing of the First Mortgage to America’s Servicing Company.
- 25         20. Based upon information and belief, the debt owed to the First Mortgage, as of the date of  
26                  filing of the instant Chapter 13 bankruptcy case, is in the amount of \$267,980.00.
- 27         21. The Residence is subject to a second position mortgage lien initially in favor of WMC  
28                  (hereinafter the “Second Mortgage”) as evidenced by that certain Deed of Trust dated

1                   February 16, 2006 and recorded in the office of the County Recorder for Maricopa County,  
2                   Arizona at Record Number 2006-0264786 on February 27, 2006 (hereinafter the “Second  
3                   D/T”). A true and correct copy of the Second D/T is attached hereto as Exhibit D and is  
4                   incorporated herein by reference.

5                   22. Defendant MERS is the nominee for WMC and WMC’s successors and assigns under the  
6                   Second D/T, and is the Beneficiary under the Second D/T.

7                   23. Defendant MERS is authorized as the Nominee and Beneficiary of the Second D/T to  
8                   accept service of process for WMC and WMC’s successors and assigns.

9                   24. Based upon information and belief, Defendant MERS, as nominee for WMC, has  
10                  transferred and/or assigned the Second Mortgage and/or the Second D/T to Defendant  
11                  Morgan Stanley.

12                  25. Based upon information and belief, Defendant MERS, as nominee for WMC, has  
13                  transferred and/or assigned the servicing of the Second Mortgage to Defendant ASC.

14                  26. Based upon information and belief, Defendant ASC is authorized as the servicer of the  
15                  Second Mortgage to accept service of process for WMC and WMC’s successors and  
16                  assigns.

17                  27. Based upon information and belief, the debt owed to the Second Mortgage, as of the date  
18                  of filing the instant Chapter 13 bankruptcy case, is in the amount of \$40,645.00.

19                  28. Plaintiffs allege that after applying the value of the Residence to the First Mortgage, that  
20                  there is no equity remaining for the Second Mortgage to attach to.

Appraised Value of the Residence . . . . .	\$110,000.00
Less Amount Owed on First Mortgage . . . . .	\$267,980.00
Available Equity for Second Mortgage . . . . .	\$0.00

24                  29. Plaintiffs assert that pursuant to 11 U.S.C. §§ 506(a)(1) and (d), Defendant’s claim is  
25                  totally unsecured and its lien upon the Residence is void.

26                  WHEREFORE, the Plaintiffs pray that this Honorable Court find in favor of the Plaintiffs and  
27 Order the following:

28                  a. That there is insufficient equity for Defendant’s second position mortgage lien to attach;

- b. That Defendant's second position mortgage lien is totally unsecured and void;
  - c. That Defendant's claim, if filed, shall be treated as a general unsecured claim under the Plaintiffs' Chapter 13 Plan;
  - d. That upon completion of the Chapter 13 Plan by the Plaintiffs and entry of a Discharge Order in the Plaintiffs' underlying Chapter 13 bankruptcy case, that the Defendants, or its successors in interest or assigns, shall immediately cause to be recorded with the office of the County Recorder for Maricopa County, Arizona, a release of the Defendant's Second D/T;
  - e. That the Order of this Court may be recorded in the Office of the Maricopa County Recorder for Maricopa County, Arizona by the Plaintiffs and that the subsequent Discharge Order in the underlying bankruptcy case may be similarly recorded, and that recordation of the former two documents shall have the effect of voiding the Second D/T on the public records; and
  - f. That the Plaintiffs recover any additional relief this Court deems just and proper.

RESPECFULLY submitted July 27, 2010.

## HAINES, KRIEGER & BALDWIN, PLLC

By: /s/ JDM 026556  
Jackson D. Moll  
15111 N. Pima Rd., Ste. 130  
Scottsdale, AZ 85260  
Attorneys for Plaintiff/Debtor